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STATE OF WISCONSIN

BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

**FREDERICK B. GILBERT, D.D.S.,
RESPONDENT.**

**FINAL DECISION & ORDER
Case No. LS-9905053-DEN**

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

*Frederick B. Gilbert, D.D.S.
W157 N6439 Columbine Court
Menomonee Falls, Wisconsin 53051*

*Dentistry Examining Board
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708*

This matter was commenced by the filing of a Notice of Hearing on May 13, 1999. A hearing was held in the above-captioned matter on July 27, 1999. Atty. James W. Harris appeared on behalf of the Division of Enforcement. The respondent, Frederick B. Gilbert, appeared in person without legal counsel.

Based upon the record herein, the Administrative Law Judge recommends that the Dentistry Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Frederick B. Gilbert (d.o.b. 03/16/56) is licensed as a dentist in the State of Wisconsin, (license #3585).
2. Dr. Gilbert's most recent address on file with the Department of Regulation and Licensing is W157 N6439 Columbine Court, Menomonee Falls, WI 53051.
3. At least from September 1987 to September 1992, respondent was employed as a dentist at Sears Dental Centers in Greendale, Wisconsin.
4. From May 1990 through July 1991, Dr. Gilbert treated the dental condition of Patient LM.
5. In June 1990, Dr. Gilbert placed porcelain veneer crowns on Patient LM's teeth (6, 7, 8, 9, 10 and 11).
6. The crowns placed in the mouth of Patient LM by Dr. Gilbert had poor marginal integrity. An unsuccessful attempt was made by Dr. Gilbert to repair the open margins on several of the crowns using a composite resin.
7. The crowns placed in the mouth of Patient LM by Dr. Gilbert did not fit correctly. Dr. Gilbert attempted to reshape and re-glaze several of the crowns. He also removed and replaced the crowns on Patient LM's teeth (6, 7, 9 and 10) several times resulting in over-preparation of the teeth and excessive removal of tooth structure.
8. Dr. Gilbert treated the dental condition of Patient MO from September 1987, to September 1992.

9. Dr. Gilbert placed porcelain veneer crowns on Patient MO's teeth (3, 13, 14, 15, 29, 30, 31 and 32).
10. The crowns placed in the mouth of Patient MO by Dr. Gilbert were poorly constructed, with open margins, resulting in caries near the margins. Treatment, including replacement of the crowns, was required.
11. Between April 1993 and June 1997, the Division of Enforcement made repeated requests to Dr. Gilbert to provide information relating to the Board's investigation of complaints involving his treatment of Patients LM and MO. On April 7, 1999, the Division served Dr. Gilbert with a subpoena that required him to appear for an investigative interview. Dr. Gilbert did not respond to the Division's request for information, and he did not respond to the Division's subpoena.
12. Dr. Gilbert did not file an Answer to the Complaint filed in this matter.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.07, Wis. Stats.
2. Dr. Gilbert, by engaging in the conduct described in Findings of Fact #4 through 7 herein, violated s. 447.07 (3) (a) (f) and (h), Stats., and s. DE 5.02 (1), (2), (5) and (16), Wis. Admin. Code.
3. Dr. Gilbert, by engaging in the conduct described in Findings of Fact #8 through 10 herein, violated s. 447.07 (3) (a) (f) and (h), Stats., and s. DE 5.02 (1), (2), (5) and (16), Wis. Admin. Code.
4. Dr. Gilbert's conduct, as described in Findings of Fact #11 herein, constitutes a violation of s. 447.07 (3) (a) and (f), Stats., and s. DE 5.02 (25), Wis. Admin. Code.
5. By failing to file an answer in this matter Dr. Gilbert is in default pursuant to s. RL 2.14, Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Frederick B. Gilbert to practice dentistry in the State of Wisconsin is hereby suspended for ninety (90) days.

IT IS FURTHER ORDERED that Frederick B. Gilbert's license to practice dentistry in the State of Wisconsin is hereby INDEFINITELY LIMITED subject to the following terms and conditions:

1. Frederick B. Gilbert shall not perform any fixed prosthodontics (crown and bridge work) on patients until he can demonstrate to the Dentistry Examining Board his competence to perform these procedures.
2. Frederick B. Gilbert shall take and successfully pass a course in fixed prosthodontics at an accredited school of dentistry approved by the Dentistry Examining Board. Said course shall consist of didactic and clinical education that is comparable to a full undergraduate level course.
3. After completing the course in fixed prosthodontics, Frederick B. Gilbert shall undergo an assessment of his skills by a dentist approved by the Dentistry Examining Board. A copy of the assessment shall be forwarded to the Dentistry Examining Board for its review.
4. If the Dentistry Examining Board finds the assessment to be acceptable, Frederick B. Gilbert may resume performing fixed prosthodontics but only under the supervision of a licensed dentist in the State of Wisconsin.

IT IS FURTHER ORDERED that upon a showing by Frederick B. Gilbert that he has successfully complied with the limitations and conditions set forth above and has practiced dentistry in a supervised setting for a period of not less than two (2) years, the Dentistry Examining Board may grant his petition for a return to full licensure if it determines that he may safely and competently engage in the practice of dentistry.

IT IS FURTHER ORDERED that Frederick B. Gilbert shall be responsible for all costs associated with the completion of his required coursework, assessment, and supervision.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Frederick B. Gilbert, pursuant to sec. 440.22, Wis. Stats.

IT IS FURTHER ORDERED that this order is effective on the date that a designee of the Dentistry Examining Board signs it.

EXPLANATION OF VARIANCE

The Board accepted the administrative law judge's Findings of Fact and Conclusions of Law with two exceptions. In the second sentence of Finding of Fact #6, the term "crown" should be plural and was amended accordingly. Additionally, the administrative law judge found that Dr. Gilbert had not filed an answer to the complaint in this matter (Finding of Fact #12), but denied a motion for a finding of default. However, the Board concluded that

because Dr. Gilbert had failed to file an answer he was in indeed in default pursuant to s. RL 2.14, Wis. Admin. Code, and therefore added Conclusion of Law #5. Moreover, there was no showing of "good cause" by the Respondent as to why a finding of default should not be entered.

In addition, the Board modified the administrative law judge's Order. The Board concluded that the proposed discipline contained in the Order was insufficient to protect the public, to rehabilitate the Respondent, and to deter similar conduct within the dental profession. As Findings of Fact #4-10 indicate, the Respondent's crown and bridge practices fell far below the minimum acceptable standard within the dentistry profession. Without exception, the crowns were poorly constructed with open margins, resulting in caries. Dr. Gilbert's attempts to repair the crowns resulted in excessive removal of tooth structure, jagged spots, notches, and damage to adjoining fillings and teeth. Ultimately, all of the crowns had to be removed and replaced.

To protect the public from further harm by the Respondent and to ensure his rehabilitation, the Board concluded that he must be prohibited from engaging in fixed prosthodontics until he has taken and successfully passed a course in fixed prosthodontics that consists of didactic and clinical education comparable to a full undergraduate level course. At the conclusion of his training, a dentist approved by the Board shall assess his skills. If, after reviewing the assessment, the Board determines that Dr. Gilbert may perform crown and bridge work, he may only do so under the supervision of a licensed dentist approved by the Board. The supervision will continue for at least two years.

Furthermore, Finding of Fact #11 sets forth evidence of Dr. Gilbert's failure to cooperate with the investigation of this matter. However, the proposed decision did not recommend any disciplinary action be take with regard to his noncompliance. The Board firmly believes that Dr. Gilbert's lack of cooperation was wholly unacceptable. If licensees are allowed to ignore requests for information, the regulatory function of the Board is rendered meaningless. Therefore, in order to prevent licensees from engaging in similar conduct and to underscore the inappropriateness of Dr. Gilbert's disregard, he shall be suspended from the practice of dentistry for ninety (90) days.

Dated at Madison, Wisconsin this 25th day of January, 2000.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

M.J. Curran, D.D.S.
Chairperson